UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y
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BROOKLYN OFFICE

FERDINAND CATAPANO,

Plaintiff,

-against-

PHOENIX HOUSES OF N.Y., INC. and PATRICIA JEFFERSON,

Defendants.

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Civil Action No. CV 09- 5420

COMPLAINT

JURY TRIAL DEMANDED

ROSS, J.

POLLAK, M.J

Plaintiff, by and through his counsel, The Law Firm of Eric Andrew Suffin states the following as his complaint against the defendants:

NATURE OF ACTION

1. This action seeks to recover damages for race/color discrimination committed by defendants against plaintiff.

PARTIES

2. Plaintiff, Ferdinand Catapano, resides at 83-19 116th Street, Apt. 6A, Kew Gardens, New York.

3. Defendant Phoenix Houses of N.Y., Inc. ("Phoenix") maintains a workplace at 50 Jay Street, Brooklyn, New York.

4. Defendant Phoenix employs at least 25 persons.

5. Defendant Patricia Jefferson ("Jefferson"), a former employer of plaintiff, undertook her job responsibilities in New York State and New York City.

JURISDICTION

6. This action arises under 42 U.S.C. § 2000e-2.

7. Pursuant to 28 U.S.C. § 1331, this Court has jurisdiction over plaintiff's claims arising under the Constitution and laws of the United States.

8. Pursuant to 28 U.S.C. § 1367, this court has supplemental jurisdiction over plaintiff's State and City law claims.

FACTS

9. Prior to being employed by defendant Phoenix plaintiff owned and operated a recruiting company.

10. Plaintiff was hired by defendant Phoenix as a job developer in or about January, 2007.

11. At all times relevant herein plaintiff performed his job competently.

12. Plaintiff has whitish skin color.

13. The other 7 employees in defendant Phoenix's vocational department, during plaintiff's employment by defendants, had blackish skin color.

14. Plaintiff was spoken down to by his co-workers with blackish skin color.

15. An employee of defendant Phoenix with blackish skin color, Valdeva, told plaintiff, this is a black meeting.

16. When Valdeva made this comment, "black meeting", defendant Jefferson, deputy director of the vocational department, and Greg Hawkins ("Hawkins"), director of the vocational department, were present.

17. Defendant Jefferson and Hawkins both laughed at Valdeva's comment.

18. Jean Scott, a person with blackish skin color, and supervisor at defendant Phoenix, referred to plaintiff as, the white guy, the guy with white hair, and white head.

19. Plaintiff and Sandra Smith, a person with blackish skin color, were both hired as job developers in or about January, 2007.

20. Plaintiff was required to punch in when he arrived at work and punch out when he departed from work, and punched in when he arrived at work and punched out when he departed from work.

21. Employees with blackish skin color were not required to punch in when they arrived at work and punch out when they departed from work, and did not punch in when they arrived at work and did not punch out when they departed from work.

22. Although plaintiff was required to be at work at 8 am, Sandra Smith was allowed to arrive at work at 8:30 am.

23. Although Ms. Smith was scheduled to work until 5 pm, Ms. Smith often departed at 4 pm.

24. In or about July, 2007 defendant Phoenix hired a third job developer, Deseree Roper, a person with blackish skin color.

25. Often when defendant Jefferson, supervisor of job developers, departed at 3:30 pm or 3:40 pm Ms. Roper would leave at the same time.

26. When plaintiff requested to take vacation in November, 2007, defendant Phoenix took 8 days to respond to plaintiff's request.

27. Employees with blackish skin color received prompt responses to their vacation requests.

28. On one occasion defendant Jefferson questioned plaintiff and screamed at plaintiff in the presence of another employee.

29. Defendant Jefferson screamed at plaintiff on other occasions.

30. Plaintiff placed more clients in jobs than Ms. Smith and placed more clients in jobs than Ms. Roper.

31. Sandra Smith has received written discipline from defendant Phoenix whereas plaintiff has received no written discipline and no verbal warnings from defendants.

32. On or about November 7, 2007 Mitch Rosenthal ("Rosenthal"), owner of defendant Phoenix, asked plaintiff to get a job for a friend of his, and plaintiff then found a job for Rosenthal's friend.

33. Although it was the job responsibility of vocational counselors to work on client's resumes, plaintiff was asked to work on client's resumes.

34. On or about November 8, 2007 an employee of defendant Phoneix, Daniele Stokes, vocational counselor, a person with blackish skin color, wrote an email to defendant Jefferson and Hawkins, and to plaintiff, containing false allegations regarding plaintiff's demeanor and actions.

35. Following the November 8, 2007 email plaintiff complained to defendant Phoenix's human resources director, Deserine Rhatigan, a person with blackish skin color, and Mike Scharf, defendant Phoenix's managing director, about false allegations in the November 8, 2007 email.

36. Plaintiff asked Ms. Rhatigan to keep his complaint confidential.

37. Nonetheless, Ms. Rhatigan informed defendant Jefferson about plaintiff's complaint of false allegations.

38. Defendants took no remedial action in response to plaintiff's complaint.

39. Following plaintiff's complaint to Ms. Rhatigan defendant Hawkins said to plaintiff, you complain too much.

40. On or about November 12, 2007 defendant Phoenix required plaintiff to submit to a drug test.

41. The results of the drug test indicated that plaintiff was not under the influence of illegal drugs.

42. Since no remedial action was taken in response to plaintiff's November 8, 2007 complaint of false allegations, after November 12, 2007 plaintiff made a second complaint to Ms. Rhatigan regarding the November 8, 2007 email.

43. No remedial action was taken in response to plaintiff's second complaint.

44. On or about December 13, 2007, plaintiff complained to Rosenthal about extreme racism by defendants.

45. On or about December 14, 2007 plaintiff called defendant Phoenix's corporate office to complain about false allegations.

46. While plaintiff was on the phone defendant Jefferson said to plaintiff, get up, you are fired.

47. Plaintiff asked why he was being fired, and defendant Jefferson responded, no reason, get out.

AS AND FOR PLAINTIFF'S FIRST CAUSE OF ACTION AGAINST DEFENDANTS FOR RACE/COLOR HARASSMENT AND DISCRIMINATION UNDER FEDERAL LAW

48. Plaintiff incorporates paragraphs 1-47 as if fully rewritten herein.

49. By and through their course of conduct defendants and their agents violated 42 U.S.C. § 2000e-2 et seq., by harassing plaintiff, discriminating against plaintiff, and terminating plaintiff's employment because of his race/color.

AS AND FOR PLAINTIFF'S SECOND CAUSE OF ACTION AGAINST DEFENDANTS FOR RACE/COLOR HARASSMENT AND DISCRIMINATION UNDER STATE LAW

50. Plaintiff incorporates paragraphs 1-49 as if fully rewritten herein.

51. By and through their course of conduct, defendants and their agents violated the New York State Human Rights Law, §§ 296 et seq. of the Executive Law, by harassing plaintiff, discriminating against plaintiff, and terminating plaintiff's employment because of his race/color.

AS AND FOR PLANITIFF'S THIRD CAUSE OF ACTION AGAINST DEFENDANTS FOR AIDER AND ABETTOR LIABILITY UNDER STATE LAW

52. Plaintiff incorporates paragraphs 1-51 as if fully rewritten herein.

53. By and through their course of conduct defendants and their agents violated the New York State Human Rights Law, §§ 296 et seq. of the Executive Law, by condoning and/or acquiescing and/or failing to take appropriate action regarding the unlawful harassment and discrimination based on plaintiff's race/color.

AS AND FOR PLAITNIFF'S FOURTH CAUSE OF ACTION AGAINST DEFENDANTS FOR RACE/COLOR HARASSMENT AND DISCRIMINATION UNDER CITY LAW

54. Plaintiff incorporates paragraphs 1-53 as if fully rewritten herein.

55. By and through their course of conduct defendants and their agents violated the New York City Human Rights Law, §§ 8-101 et seq. of the New York City Administrative Code, by harassing plaintiff, discriminating against plaintiff, and terminating plaintiff's employment because of his race/color.

AS AND FOR PLAITNIFF'S FIFTH CAUSE OF ACTION AGAINST DEFENDANTS FOR AIDER AND ABETTOR LIABILITY UNDER CITY LAW

56. Plaintiff incorporates paragraphs 1-55 as if fully rewritten herein.

57. By and through their course of conduct, defendants and their agents violated the New York City Human Rights Law, §§ 8-101 et seq. of the New York City Administrative Code, by condoning and/or acquiescing and/or failing to take appropriate action regarding the unlawful harassment and discrimination based on plaintiff's race/color.

58. Other than this lawsuit, there is no other complaint pending with any administrative agency or court regarding these acts.

59. Pursuant to 42 U.S.C. § 2000e-5, on October 28, 2009 plaintiff was issued a right to sue by the U.S Equal Employment Opportunity Commission.

60. Pursuant to § 8-502 of the New York City Administrative Code, plaintiff has served a copy of this complaint upon the City Commission on Human Rights and Corporation Counsel.

WHEREFORE, the plaintiff prays that this Court:

(a) accepts jurisdiction over this matter;

(b) impanels and charges a jury with respect to the causes of action; and,

(c) awards the following damages jointly and severally against both defendants:

i. Back pay, front pay, and all benefits along with pre and post judgment interest in the amount of two million five hundred thousand dollars ($2,500,000.00);

ii. Punitive, liquidated and compensatory damages including, but not limited to, damages for pain and suffering, anxiety, humiliation, physical injury and emotional distress in order to compensate him for the injuries he has suffered and to signal to other employers that discrimination in employment is repulsive to legislative enactments in the amount of two million five hundred thousand dollars ($2,500,000.00);

iii. Attorneys' fees, costs, and expenses as provided for by the applicable statutes; and

iv. Any other relief which this Court deems just and equitable.

Dated: December 8, 2009
New York, New York

Respectfully submitted,

By: ______________________________

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